

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 8, 2012; Ruling No. 2012-3253 through 2012-3260; Agency: Department of Social Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Social Services
Ruling Nos. 2012-3253; 3254; 3255; 3256; 3257; 3258; 3259; and 3260
February 8, 2012

The agency has requested a compliance ruling regarding eight grievances that the grievant initiated between September 8-16, 2011 with the Department of Social Services (the agency). The agency claims that the grievant has failed to appeal or conclude her grievances as she was instructed in EDR Rulings 2012-3167 through 3174. For the reasons set forth below, this Department concludes that the grievant is not in compliance with the grievance process.

FACTS

In EDR Rulings 2012-3167 through 3174, this Department ruled that the grievant did not have access to the grievance procedure. The ruling went on to instruct that she had the option of appealing the EDR ruling to the circuit court and that if she wished to do so, she should follow the steps outlined in the instruction sheet attached to the ruling. That sheet directed:

The ruling which you have received indicates that you do not have access to the *Grievance Procedure*.

You have the right to appeal this ruling to the circuit court having jurisdiction in the locality in which you are employed. If you wish to pursue this course, you must notify your Human Resources office, in writing, that you wish to appeal this ruling to circuit court and return it to the Human Resources office of your agency within five work days of receipt of this ruling. The appeal to the circuit court is available at no cost to you. Your Human Resources office will transmit the record to the court upon receipt from you of the Form A. The appeal will be considered by the circuit court in the jurisdiction in which you are employed. You may represent yourself or retain an attorney to represent you. The circuit court will decide whether you have access to the *Grievance Procedure* based on the grievance record (the Form A and any attachments

previously made part of the grievance) unless you specifically make a request to present evidence. The court's decision is final. If you choose not to appeal this ruling, you should notify your Human Resources office, in writing, that the grievance is concluded and return the Form A to your Human Resources office within five work days of receipt of this ruling.

Because it could find no evidence that the grievant either requested to advance or conclude her grievances, the agency sent the grievant a written correspondence on January 12, 2012 directing her to either advance (appeal) or conclude her grievances within five workdays. As more than five workdays have elapsed since the agency's notification of the alleged noncompliance, and the grievant has apparently not yet cured her apparent failure to advance or conclude her grievances, the agency seeks a compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's (EDR's) involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.³

In this case, we conclude the grievant has failed to advance or conclude her grievances within five workdays of receiving this Department's access decision (EDR Rulings 2012-3167 through 3174). Moreover, the agency has notified the grievant of her apparent failure to advance or conclude, but she has done neither.

¹ *Grievance Procedure Manual* § 6.3.

² *See Id.*

³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

As the grievant has failed to advance or conclude her grievances in a timely manner, she has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude her grievances or advance them to the circuit court for an access determination. If she does neither, the agency may administratively close the grievances without any further action on its part. The grievances may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia Farr
Director

⁴ See Va. Code § 2.2-1001(5); 2.2-3003(G).